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EXAMINER

DONLON, RYAN D

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,185	Applicant(s) GAUTHEREON ET AL.	
	Examiner RYAN D. DONLON	Art Unit 3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-18,22-30,32-43 and 66-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/22/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

1. Claim 22 is objected to because of the following informalities: The punctuation of this claim is incorrect in the phrase "have. been". Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 17 and 34 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 17 recites the limitation "the user" in line 2. There is insufficient antecedent basis for this limitation in the claim. For the purposes of compact prosecution, the Examiner will interpret this to mean --a user--. Claim 17 also recites the limitation "the options" in line 2. There is insufficient antecedent basis for this limitation in the claim. For the purposes of compact prosecution, the Examiner will interpret this to mean --options --.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 15-18, 22-30, 32-43 and 66-68 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. Claims 15-18, 26, 28-30, 32-43 and 66-68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As an initial matter, the United States Constitution under Art. I, Section, cl. 8 gave Congress the power to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. § 101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof". Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". Further, despite the express language of § 101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by § 101. These exceptions include "laws of nature", "natural phenomena" and "abstract ideas". See *Diamond v. Diehr*, 450, USPQ 175, 185,209 USPQ (BNA) 1, 7 (1981). However, the courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank &*

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Trust Co. v. Signature Financial Group, Inc. 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

7. Claim 15 is directed to merely software (abstract ideas) for a funds investment system. However, there are no actual components of the system other than the software. Accordingly, the claims do not produce any output being considered as a concrete, useful and tangible result. Thus claims 15-18 are rejected as being non-statutory.

8. Claims 22-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to computer software which is stored on a computer readable medium, therefore this claim is directed to non-functional descriptive material which is not made statutory by also claiming the computer readable medium thus claiming an article of manufacture (rather than simply the descriptive material). Non-functional descriptive material is non-statutory subject matter unless it claimed in *combination* with an appropriate computer readable medium. The applicant is encouraged to amend the claim to a proper computer readable medium (not e.g. a signal) encoded with said non-functional descriptive material that can function with a computer to effect a useful, concrete and tangible result.

9. **Examiner Notes:** When amending the claims to over come these rejections, the Examiner recommends amending the body of them claim(s), rather than simply amending the preamble(s) (see *Ex parte* Langemyr Appeal No. 2008-1495 (May 28,

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2008)).

10. Claims 26-30, 32-43, and 68 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

11. 35 U.S.C. 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added). The applicants claims mentioned above are intended to embrace or overlap two different statutory classes of invention as set forth in 35 U.S.C. 101. The claims begin by discussing a system, but subsequently the claims then deal with the specifics of a method. "A claim of this type is precluded by the express language of 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 15-18, 22-26, 28-29, 30-33, 35-43, 66 are rejected under 35

U.S.C. 102(b) as being anticipated by Ray et al., Pat No. 6,018,722 (hereinafter Ray), patented on January 25, 2000.

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As per **claim 15**:

Ray discloses funds investment system for managing funds that have been allocated to a plurality of asset manager programs through a plurality of intermediate allocations, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, with each intermediate allocation of funds according to a predefined rule, the system including:

a receiving means for receiving data relating to the value of funds held by the plurality of asset manager programs (mutual funds) (see at least column 2 lines 4-47 and 6 lines 13-37);

a calculating means for determining the value of intermediate allocations (see at least column 7 lines 22-57); (the phrase “that would have led to the distribution of funds to individual asset manager programs according to the value data received” is interpreted as an intended use rather than a limitation since the term “would” appears to express wish, desire, or intent);

a comparison means for comparing the determined intermediate allocations with the predefined rules (allocation model) for same (see at least column 5 lines 33-48, column 8 lines 63-67 and column 9 lines 1-8);

and the calculating means determining a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations in the event that a variance greater than a predetermined amount exists between the determined intermediate allocation and the predefined rules for same (see at least

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column 8 lines 3-14, 54-67 column 9 lines 1-8)

As per **claim 16:**

A funds investment system according to claim 15 wherein the determined new allocation of funds distribution to asset managers is provided to a user by a data output means thus reporting the new distribution required to maintain the integrity of the predefined intermediate allocation rules (see at least claim 5 and column 9 lines 29-43).

As per **claim 17:**

A funds investment system according to claim 15 wherein a data input means is operated by the user to request a calculation to determine the options that are available to effect the new allocation of funds (see at least the “ÆExpert RIA” system in column 9 lines 29-43).

As per **claim 18:**

A funds investment system according to claim 17 wherein the selection of an option and effecting the transfer of funds between asset managers to accord with the new distribution is automated (see at least column 9 lines 44- 67 and column 10 lines 1-12 wherein the selection and transfer of funds is automated using a computer).

As per **claim 66:**

A funds investment system according to claim 15 wherein the intermediate

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allocations are grouped to define categories of allocations said categories being individually managed by a computing means in operable communication with the calculating means such that the computing means receives data relating to the amount of funds allocated to each intermediate allocation and/or each allocation category (see at least column 8 lines 3-14 and column 5 lines 33-48, column 8 lines 63-67 and column 9 lines 1-8).

As per **claim 22**:

Ray discloses a computer program embodied on a computer readable medium for managing funds that have been allocated to a plurality of asset manager programs through a network of intermediate allocations, the most subordinate allocations representing the allocation . of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, and where each intermediate allocation accords with a predefined rule wherein said computer program includes computer instruction code for executing tasks including:

code for receiving data relating to the value of funds held by the plurality of asset manager programs (mutual funds) (see at least column 2 lines 4-47 and 6 lines 13-37);

code for determining the intermediate allocations (see at least column 7 lines 22-57); (the phrase "that would have led to the distribution of funds to individual asset manager programs according to the value data received" is interpreted as an intended use rather than a limitation since the term "would" appears to express wish, desire, or intent);

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code for comparing the determined intermediate allocations with the pre-defined rules (allocation model) for same and determining whether a variance greater than a predetermined amount exists between the determined intermediate allocation and the pre-defined rules for same (see at least column 5 lines 33-48, column 8 lines 3-67, column 9 lines 1-8 and claim 5);

and code for calculating a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations (see at least claim 5 and column 9 lines 29-43).

As per claim 23:

A computer program according to claim 22 wherein the computer program further includes computer instruction code for reporting the calculated new allocation of funds (see at least claim 5 and column 9 lines 29-43).

As per claim 24:

A computer program according to claim 23 wherein the computer program further includes computer instruction code for receiving an instruction from a user to effect a transfer of funds to each most subordinate allocation to accord with the calculated new allocation (see at least the “ÆExpert RIA” system in column 9 lines 29-43).

As per claim 25:

A computer program according to claim 23 wherein the computer program further

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includes computer instruction code for transferring funds to accord with the new allocation (this claim introduces no substantial limitation over that of claim 24 and is therefore rejected under a similar rationale).

As per claim 26:

In a data communications network including communication devices enabling communication between a user and a funds investment system, a method of investing funds with asset manager programs by distributing total funds available for investment to a plurality of asset manager programs ("mutual funds") (see at least column 2 lines 40-48) said distribution effected by performing the method step of performing a plurality of intermediate allocations through a network of allocations, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, each intermediate allocation according with predefined rules (allocation model) supplied to the system by the user over the communications network (see at least column 4 lines 66-67 and column 5 lines 1-19) and repeating the step of performing intermediate allocations until all available funds are allocated (allocating an account) with asset manager programs (see at least column 5 lines 33-48, column 8 lines 3-67, column 9 lines 1-8 and claims 1 and 5).

As per claim 28:

A method according to claim 26 wherein the predefined rules for intermediate

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allocations are established to apportion funds according to an investor's preferred distribution (allocation model) of investment funds to particular assets or classes of assets (see at least column 4 lines 66-67 and column 5 lines 1-19).

As per **claim 29**:

A method according to claim 26 wherein the intermediate allocations (mutual funds) form a network of allocations and an intermediate allocation receives an apportionment of funds from a superior allocation (an account) and apportions funds to a subordinate allocation (see at least column 2 lines 40-48, column 8 lines 3-14).

As per **claim 30**:

In a data communications network including communication devices enabling communication between a user and a funds investment system, a method of investing funds with asset manager programs by distributing total funds available for investment to a plurality of asset manager programs through a network of allocations, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, said distribution effected by performing the method step of performing a plurality of intermediate allocations each intermediate allocation according with predefined rules supplied to the system by the user over the communications network and repeating the step of performing intermediate allocations until all available funds are allocated with asset manager programs:

wherein the method includes the step of receiving from asset managers, to whom funds have been allocated, a valuation of the invested funds in each of the asset manager programs and determining a value at each superior intermediate allocation, the value being determined from valuations at subordinate allocations (see at least “account value” column 5 lines 45-58 and claim 1 which shows gathering a valuation of the invested funds (market value) of the plurality of securities).

As per **claim 32**:

A method according to claim 30 wherein the valuation of intermediate allocations occurs periodically (see at least column 4 lines 46-55).

As per **claim 33**:

A method according to claim 30 wherein the valuation of intermediate allocations occurs as a result of a predefined trigger (daily) (this claim introduces no substantial limitation over that of claim 32 and is therefore rejected under a similar rationale).

As per **claim 35**:

A method according to claim 30 wherein the valuations of the intermediate allocations may be compared with the predefined allocation rules to determine the extent of variance with respect to those rules (see at least column 8 lines 3-14 and

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claim 5).

As per **claim 36**:

A method according to claim 30 wherein the method includes rules relating to the allowable variance of allocation valuations as compared with the predefined rules regarding intermediate allocations and in the event that the allowable variance is exceeded, a warning (buy or sell recommendation) is provided (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

As per **claim 37**:

A method according to claim 36 wherein the allowable variance is exceeded and the method includes the generation of recommended actions for the distribution of investment funds in order to bring the distribution of funds into agreement with the predefined allocation rules (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

As per **claim 38**:

A method according to claim 37 wherein the recommended actions include the provision of recommended buy and sell orders with respect to particular securities (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8).

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As per **claim 39**:

A method according to either claim 37 wherein the method includes the step of providing a simulated valuation of the intermediate allocations and the funds invested with individual asset manager programs that would most likely result from executing the recommended actions (see at least figure 3 and column 3 description of “FIG 3”).

As per **claim 40**:

In a data communications network including communication devices enabling communication between a user and a funds investment system, a method of managing invested funds that have been allocated to a plurality of asset manager programs through a network of intermediate allocations, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, with each intermediate allocation according with a predefined rule communicated to the system by the user, the funds investment system performing the method steps of:

obtaining data relating to the value of funds allocated to the plurality of asset manager programs;

calculating the intermediate allocations that would have led to the distribution of funds to individual asset manager programs according to the value data obtained;

comparing the calculated intermediate allocations with the pre-defined rules for same;

and in the event that a predefined variance between the calculated intermediate

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allocation and the predefined rule for same is exceeded, calculating a new allocation of funds to asset managers in accordance with the pre-defined rules for intermediate allocations (**Examiner Notes:** this claim introduces rejected under the same rationale as claim 15).

As per **claim 41:**

A method according to claim 40 wherein the requirement to perform a new calculation of funds distribution to asset managers is communicated to the user as warning (buy or sell recommendation) that action is required to maintain the integrity of the pre-defined intermediate allocation rules (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

As per **claim 42:**

A method according to claim 40 wherein the funds investment system determines the options available (buy or sell recommendations) to effect the new distribution of funds and communicates same to the user for consideration (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

As per **claim 68:**

Ray discloses a method according to either claims 40 wherein intermediate allocations are grouped to define categories of allocations, the method including the step of reporting the amount of funds allocated to each intermediate allocation and/or

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allocation category thus enabling the allocation categories to be individually managed. (For the purposes of prosecution the phrase “thus enabling the allocation categories to be individually managed” does not further limit the scope of the claim, since this phrase does not positively recite a limitation, but rather the intended consequence of implementing the claim. See at least column 8 lines 3-14 and lines 63-67; column 9 lines 1-8; and column 5 lines 33-48, wherein it is disclosed that the allocations are used to develop reports).

As per **claim 43**:

A method according to claim 42 wherein the user selects at least one of the available options and communicates the selection to the funds investment system, said funds investment system upon receiving said selection effecting transfer of funds to effect the new distribution of funds (see at least column 9 lines 66-67 and column 10 lines 1-12).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claim 27, 34 and 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray as applied to claim 26 above.

As per **claim 27**:

Ray does not disclose a method according to claim 26 wherein the communication devices used by the user include any one or more of the following:

- a laptop personal computer;
- a notebook personal computer;
- a wireless laptop personal computer;
- a wireless notebook personal computer;
- a cell phone;

or a cell phone having connection facilities to the data communications network.

However Ray does disclose the use of a personal computer (see at least column 9 lines 44-65). The use of a laptop personal computer is a well known improvement over the use of a desktop computer and applying this improvement would have been well with in the means of one of ordinary skill at the time of the invention. Therefore it would have obvious to improve the system for investing of Ray, by the simple substitution the use of a personal computer for the use of a laptop to obtain predictable results. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

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As per **claim 67**:

A computer program embodied on a computer readable medium according to claim 27 wherein intermediate allocations are grouped to define categories of allocations, the computer program including code for reporting the amount of funds allocated to each intermediate allocation and/or allocation category thus enabling the allocation categories to be individually managed.

As per **claim 34**:

Ray does not teach a method according to claim 33 wherein the predefined trigger is a value of funds with an asset manager program exceeding a predetermined amount. However, Ray does teach valuation triggers (see the rejection to claim 33 above)

Further it would have been obvious to the ordinary practitioner at the time of the invention to perform a valuation of the holdings of a fund as the result of one or more of the fund's holdings significantly changing in value. For example, many asset managers invest a fund's financial holdings using strategies consisting of a balancing a fund's holdings across various asset classes (e.g. energy, health care, commodities, etc). Each asset class is typically assigned percentage of the total value of the funds holdings as a target (e.g. 33% energy, 33% health care, 34% commodities). The fund will then invest in various assets in an asset class such that the total value of the various assets in an asset class meet the target percentage of the total value of the entire fund, thus the implementing the fund's strategy. When the value of a particular

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asset in the fund's holdings grows (or falls) suddenly (say because of a merger or a new business venture), a portfolio manager will perform a valuation of the fund's holdings to determine the change in the value of the particular asset in question places the funds target balance off the target the strategy.

It would have been obvious to one of ordinary skill in the art to include in the method of valuing a fund as the result of a trigger of Ray, the well known method of triggering a valuation as the result of an asset significantly changing in value because this would have allowed for asset managers and investor alike to be notified of the imbalances in their portfolio. Further the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. DONLON whose telephone number is (571)270-3602. The examiner can normally be reached on Monday through Friday 7:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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